

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LIBERTY MUTUAL INSURANCE
COMPANY,

Plaintiff,

v.

MAHMOUD ISMAIL SBAIH, et al.,

Defendants.

2:10-CV-1384 JCM (RJJ)

ORDER

Presently before the court is plaintiff/counter-defendant Liberty Mutual Insurance Company's motion to dismiss or, in the alternative, motion to stay discovery. (Doc. #12). Defendants/counter-claimants Mahmoud and Sameera Sbaih have responded (doc. #15), and Liberty Mutual has replied (docs. #23, 24).

Plaintiff Liberty Mutual filed the instant complaint on August 13, 2010, requesting relief in the form of a declaration "of its rights, duties, and obligations under the LJ Policy regarding UM/UIM benefits." (Doc. #1, p.4). In response, Dr. Sbaih filed an answer and counter-claim on August 24, 2010, alleging: (1) breach of contract, (2) violation of NRS 687B.440, (3) tortious breach of contract, (4) breach of the implied covenant of good faith and fair dealing, (5) unfair claims practices, (6) breach of fiduciary duty, (7) intentional infliction of emotional distress, (8) declaratory relief, and (9) attorney's fees and special damages. (Doc. #7).

Liberty Mutual has filed the instant motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), alleging that the claims for relief pled in the counter-claims will not be ripe for

1 adjudication until this court renders a decision on the underlying declaratory relief action, which will
2 adjudicate the rights between the parties. Alternatively, Liberty Mutual requests that the court stay
3 discovery on the counter-claims pending resolution of the underlying action.

4 **I. Dismissal Pursuant to Federal Rule of Civil Procedure 12(b)(1)**

5 Dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) is appropriate where the court
6 lacks subject matter jurisdiction over a plaintiff's claim. Here, plaintiff Liberty Mutual alleges that
7 the Sbaih's counter-claims are not ripe as Liberty Mutual has not yet rejected Dr. Sbaih's claim;
8 rather, it has merely requested further documentation. Because ripeness pertains to a federal court's
9 subject matter jurisdiction, it is properly the subject of a Rule 12(b)(1) motion to dismiss. *White v.*
10 *Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

11 The court agrees with the defendants that the action is ripe. An insured may institute a bad
12 faith action against an insurer based on failure to pay benefits once the insured establishes a "legal
13 entitlement" and "unreasonable conduct" by the insurer concerning its obligations to the insureds.
14 *Pemberton v. Famers Ins. Exch.*, 858 P.2d 380, 384 (Nev. 1993). The term legal entitlement has been
15 interpreted to mean that the "insured must be able to establish fault on the part of the uninsured
16 motorist which gives rise to the damages and to prove the extent of those damages." *Id.* The court
17 is satisfied that the defendants have sufficiently alleged these necessary facts in the counter-claims.
18 Accordingly, the motion to dismiss is without merit.

19 **II. Stay of Discovery**

20 Plaintiff/counter-defendant has alternatively requests that the court stay discovery of the
21 counter-claims pending resolution of the underlying declaratory relief action. Whereas the counter-
22 claims are ripe and the discovery issues between the counter-claims and complaint are related, the
23 court sees no reason to stay discovery.

24 Accordingly,

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Liberty Mutual's
2 motion to dismiss defendants' counter-claims or alternatively stay discovery (doc. #12) is DENIED.

3 DATED February 3, 2011.

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5 
6 UNITED STATES DISTRICT JUDGE